

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

ADAM MATOT,

13-cv-0153-TC

Plaintiff,

v.

ORDER

DOES 1-5,

Defendant.

COFFIN, Magistrate Judge:

Plaintiff Adam Matot filed this suit alleging computer fraud and abuse defamation under 18 U.S.C. § 1030 on January 28, 2013. Instead of listing any named defendants, however, plaintiff named Does 1-5. (# 1). He alleges that he is subject to “cyber-bullying” and that this action is necessary to permit plaintiff to identify defendants. (Id. at ¶ 4-7). He states that Does 1-5 “are or were in the last two years students at Judson Middle School....” (Id. at ¶ 13).

Rule 10 of the Federal Rules of Civil Procedure requires the plaintiff to include the names of the parties in an action. The Rules do not otherwise expressly authorize or prohibit the use of Doe defendants, although such use can create both legal and practical problems and is not favored in this

Circuit. Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir.1980), Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir.1999), McKellip v. Las Vegas Metropolitan Police Department, 2007 WL 173857 at *4 (D.Nev.2007). Nevertheless, “where the identity of alleged defendants will not be known prior to the filing of a complaint, the plaintiff should be given an opportunity through discovery to identify the unknown defendants,” unless it is clear that discovery would not uncover the identities or that the complaint should be dismissed on other grounds. Gillespie, 629 F.2d at 642; see Wakefield, 177 F.3d at 1163 (citation omitted).

Here, there are no named defendants to serve in this action, which as a practical matter causes problems. Namely, there is no one upon which to serve summons. It is possible, however, that the court may order discovery early in the case under Rule 26 (d) and Rule 45 allows service of a subpoena on a non-party. Cottrell v. Unknown Correctional Officers, 1-10, 230 F.3d 1366 (9th Cir. 2000).

Accordingly, I give plaintiff’s counsel leave to issue a subpoena to the Judson Middle School for the limited purpose of discovering the identities of the unknown Does 1-5. Within 45 days from the date this order is filed, plaintiff shall either amend his complaint to identify the named defendant or request an extension of time to find out the defendants’ identities. After identification of the defendants, the Clerk shall issue Discovery Order and Case Assignment Orders.

IT IS SO ORDERED

DATED this 4 day of February 2013.


 THOMAS M. COFFIN
 United States Magistrate Judge